Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

PIPER JAFFRAY & CO., et al.,

Petitioners,

v.

RAYMOND KAUFMAN, Individually and as Trustee of the MONTANA FACIAL SURGERY PENSION AND PROFIT PLAN and JANET L. NOTHSTINE,

Respondents.

On Petition For Writ Of Certiorari To The Montana Supreme Court

PETITION FOR WRIT OF CERTIORARI

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PARTIES

Petitioner Piper Jaffray & Co.("Piper Jaffray"), defendant below, is a registered broker-dealer conducting business in all 50 states, including Montana. At all times material to this case Piper Jaffray conducted business at, among other locations, its Branch Office in Butte, Montana.

Defendant Thomas J. O'Neill was at all times material the Piper Jaffray Account Executive for the Respondents.[1]

The plaintiffs below, Respondents here, were at all times material to the case, clients of Piper Jaffray. Each Respondent had signed at least three customer account agreements with Piper Jaffray containing a pre-dispute arbitration clause, typical of the clauses used throughout the securities industry nationwide. Each Respondent was at all times material a citizen of Montana and maintained an account with Piper Jaffray's Butte office.

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[1] Mr. O'Neill is not represented with respect to this Petition.

RULE 29.1 LISTING

Piper Jaffray & Co. was formerly U.S. Bancorp Piper Jaffray Inc., a wholly owned subsidiary of U.S. Bancorp. During the pendency of this litigation, the name and ownership of U.S. Bancorp Piper Jaffray Inc. changed in connection with the spin-off by U.S. Bancorp of its capital markets business on December 31, 2003. To effect the spin-off, U.S. Bancorp contributed its capital markets business, including U.S. Bancorp Piper Jaffray Inc., to a newly formed subsidiary, Piper Jaffray Companies, and subsequently distributed all of the shares of Piper Jaffray Companies to the shareholders of U.S. Bancorp. In connection with the spin-off, U.S. Bancorp Piper Jaffray Inc. changed its name to Piper Jaffray & Co. and became a wholly owned subsidiary of Piper Jaffray Companies, and Piper Jaffray Companies became a publicly traded company whose shares are traded on the New York Stock Exchange under the symbol "PJC."

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I. The Montana Supreme Court's unique judicially imposed requirement that pre-dispute arbitration clauses commonly contained in securities industry customer agreements must be explained to the customer before the agreement is even executed, which requirement is not applied to any other contract provisions in Montana, and is in direct conflict with decisions by four other State Supreme Courts, violates the Federal Arbitration Act and frustrates the national policy of favoring arbitration as a means of dispute resolution	13

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a Writ of Certiorari to review the judgment of the Supreme Court of Montana in the following case.

CITATION TO OFFICIAL AND UNOFFICIAL REPORTS

Raymond Kaufman, Individually and as Trustee of the Montana Facial Surgery Pension and Profit Plan, and Janet L. Nothstine v. U.S. Bancorp Piper Jaffray Inc., et al., 2005 MT 191N, 120 P.3d 809 (2005) (App. 1-5).

This case relies upon and expressly adopts the holdings and analysis set forth in *Willems v. U.S. Bancorp Piper Jaffray Inc., et al.*, 2005 MT 37, 107 P.3d 465 (2005) (App. 37-49),[2] which is one of twenty-three civil cases arising out of allegations of misconduct by Mr. O'Neill and Piper Jaffray with respect to the accounts of the respective plaintiffs.

JURISDICTION

The Montana Supreme Court rendered its decision on August 9, 2005. Justice O'Connor granted an extension of time up to and including December 7, 2005 to file the Petition for Writ of Certiorari. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Commerce Clause, U.S. Const., art. I, § 8, cl. 3:

> The Congress shall have the Power . . .
>
> To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.

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[2] The *Willems* case has been settled and therefore no Petition is being filed with respect to that case.